

Members present: Kevin M. McCormick Christopher A. Rucho
 Valmore H. Pruneau Steven Quist
 Allen R. Phillips

Mr. Phillips convened the meeting at 7:55 p.m. and welcomed newly elected Board member Steven Quist.

Board Reorganization

Motion Mr. Pruneau to nominate Mr. McCormick to serve as Chairman, seconded by Mr. Rucho, all in favor.

Motion Mr. McCormick to nominate Mr. Pruneau to serve as Vice Chairman, seconded by Mr. Rucho, all in favor.

Motion Mr. Rucho to nominate Mr. Phillips to serve as Clerk, seconded by Mr. Pruneau, all in favor.

Review Of Other Selectmen Assignments

Mr. McCormick explained that in addition to being the Sewer Commissioners and the Road Commissioners the Selectmen have a seat on a number of other committees, which they typically share across the Board.

1. Earth Removal Board – Mr. Pruneau. Mr. Pruneau offered to remain on the Board.

Motion Mr. Phillips for Mr. Pruneau to continue to serve on the Earth Removal Board, seconded by Mr. Rucho, all in favor.

2. TWPC – Mr. McCormick. Mr. Phillips indicated that he is willing to take this assignment over from Mr. McCormick, who has been on the committee for a number of years.

Motion Mr. McCormick to have Mr. Phillips serve on the Town-wide Planning committee, seconded by Mr. Rucho, all in favor.

3. Upper Blackstone Water Pollution Abatement District (alternate) – Mr. Phillips. Mr. Phillips offered to remain as the alternate.

Motion Mr. Pruneau to have Mr. Phillips continue to serve as an alternate to the Upper Blackstone Water Pollution Abatement, seconded by Mr. Rucho, all in favor.

4. MBTA – Mr. McCormick. Mr. McCormick offered to continue.

Motion Mr. Rucho for Mr. McCormick to continue to serve on the MBTA, seconded by Mr. Phillips, all in favor.

5. Policy Subcommittee – Mr. McCormick & Mr. Phillips. Both gentlemen indicated their willingness to continue.

Motion Mr. Rucho to have Messrs. McCormick and Phillips continue on the Policy Subcommittee, seconded by Mr. Phillips, all in favor.

6. RFP Tivnan Dr. – Messrs. Rucho & Phillips. When the RFP for Tivnan Drive was developed, this group advised the Town Administrator.

Motion Mr. Phillips to remove this assignment from the list as it no longer needed, seconded by Mr. Pruneau, all in favor.

7. Parks and Recreation Facility Review Committee – Messrs. Pruneau & Rucho. Both gentlemen indicated their willingness to continue.

Motion Mr. Phillips to have both Messrs. Pruneau and Rucho continue on the Parks and Recreation Facility Review Committee, seconded by Mr. Pruneau, all in favor.

8. Affordable Housing Trust Board of Trustees – Mr. McCormick. Mr. Quist indicated an interest in this assignment.

Motion Mr. Phillips to have Mr. Quist serve on the Affordable Housing Trust Board of Trustees, seconded by Mr. Rucho, all in favor.

9. CMRPC alternate – vacancy. Mr. Quist offered to fill the vacancy.

Motion Mr. Phillips to assign Mr. Quist as the CMRPC alternate, seconded by Mr. Pruneau, all in favor.

10. DCR Focus Group – Mr. McCormick

Motion Mr. Rucho to remove this assignment as they never met, seconded by Mr. Phillips, all in favor.

11. Shared Services Committee – Mr. Phillips. Mr. Phillips would like to continue with this committee.

Motion Mr. Quist to have Mr. Phillips continue on the Shared Services Committee, seconded by Mr. Rucho all in favor.

12. Community Preservation Committee – Mr. Rucho. Mr. Rucho offered to continue.

Motion Mr. Phillips to have Mr. Rucho serve on the Community Preservation Committee, seconded by Mr. Pruneau, all in favor.

13. DPW Union Negotiating Team – Vacancy and Mr. Rucho. Mr. McCormick offered to fill the vacancy.

Motion Mr. Phillips to have Messrs. Rucho and McCormick serve on the DPW Union Negotiating Team, seconded by Mr. Pruneau, all in favor.

14. School Negotiating Team – Mr. Phillips. Mr. Phillips offered to continue.

Motion Mr. Rucho to have Mr. Phillips continue on the School Negotiating Team, seconded by Mr. Pruneau. It was noted that typically the Chairman serves in this role, however, it can be either the Chairman or his designate. Vote on the motion- all in favor.

15. Police Negotiating Team – Mr. Rucho and Mr. Pruneau. Both gentlemen indicated an interest in remaining on the team.

Motion Mr. Phillips to have Messrs. Rucho and Pruneau continue on the Police Negotiating Team, seconded by Mr. Quist, all in favor.

16. Municipal Coalition for Affordable Housing – Vacancy. Mr. Quist offered to fill the vacancy.

Motion Mr. Phillips to have Mr. Quist serve on the Municipal Coalition for Affordable Housing, seconded by Mr. Pruneau, all in favor.

17. Municipal Buildings Committee – all members

Motion Mr. Phillips for all members to serve on the Municipal Buildings Committee, seconded by Mr. Pruneau, all in favor.

18. Bylaws Committee – the Chairman at the time serves on this committee.

OLD BUSINESS

1. Review and consider voting to approve draft Agreement between DCR and the Town of West Boylston for Wachusett Earthday Project (tentative)

John Scannell, Regional Director of the Department of Conservation and Recreation, Division of Watershed Supply Protection joined the Board with Arthur Allen, member of the Wachusett Earthday Board of Directors from the Town of Princeton.

Mr. Gaumond explained that the members of the Board of Selectmen raised objections when the project was to be sited within the boarder of West Boylston. They met several times with DCR

and Wachusett Earthday and asked for clarification on a number of items. The project, which is located on Huntington Highway, is on DCR property and there is a possibility of seven towns participating in their household hazardous waste collections and recycling facility. The facility will accept items such as paint, pesticides and insecticides, all items which should not be disposed of in our regular trash. They will also have a recycling center which will accept metal and tires.

The Selectmen's agenda contains a draft Memorandum of Agreement (MOA), which outlines the nine points the Board wished clarification on. Mr. Gaumond feels we are close to being able to sign the agreement.

Mr. Phillips voiced concern with the fact that all mention of Wachusett Earthday has been removed from the document. Mr. Scannell explained that because Wachusett Earthday is acting as an agent for DCR they will have to abide by everything DCR asks of them. Mr. Phillips' frustration is if something goes wrong he wants to have someone he can go to and not hear as we so often have from DCR that 'you are the state'. His preference is to have Wachusett Earthday mentioned in the agreement. Mr. Scannell is not certain that Wachusett Earthday is absolutely opposed to being mentioned in the agreement as they will act as DCR's agent and abide by what DCR says. Mr. Phillips would like the agreement signed by all parties involved. Mr. Allen noted that Wachusett Earthday will be operating the site. Mr. Scannell is fine having them back in the agreement.

With regard to the MOA, Mr. Phillips feels a lot of the language looks different. He questions why West Boylston is signing an agreement that is not of the same understanding as the agreement signed by the other six communities. Mr. Scannell explained that the other communities were shown a copy of what DCR is working on for an agreement with West Boylston, however, they are not parties to that agreement. Each individual community has an agreement with DCR and Wachusett Earthday has a separate agreement with DCR. Mr. Phillips questioned why there is a new agreement. According to Mr. Scannell a lot has happened and their attorney thought the agreement should better reflect where we are right now, however, it has not yet been signed by Wachusett Earthday. Mr. Phillips would like to review the agreement signed between DCR and Wachusett Earthday versus the one not signed. According to Mr. Scannell, both sides have agreed to the agreement and he thinks it will be signed very soon.

Mr. Gaumond asked if Wachusett Earthday has a meeting some time soon. Mr. Allen noted that the group has not met in some time because of the on-going negotiations. He also indicated that the board has had an opportunity to review the MOA and the DCR and West Boylston agreement. Mr. Phillips asked if the Wachusett Earthday Board had any questions or concerns with the document. According to Mr. Allen they did not because they have been party to the development.

Mr. Pruneau questioned the language in Section 23 relative to spills. Mr. Scannell explained that Wachusett Earthday is liable for any actions of their employees on the site such as somebody hitting someone with their vehicle. If something happens on the site not caused by Wachusett Earthday, the Commonwealth will be responsible. He noted that ultimately the Commonwealth is responsible for anything that happens on their property.

Mr. Quist questioned what benefit does our town get. Mr. Scannell explained that DCR is hoping the town ends up as a participating member and they will be able to use the resource. DCR is waiving the start up costs for West Boylston and will install monitoring wells. Mr. Quist asked why the town doesn't run one of these facilities. Mr. Phillips explained that DCR owns the land and Wachusett Earthday entered into the agreement with DCR. Mr. McCormick noted they have been doing household hazardous collections for 20 years in town and it would be too expensive for West Boylston to do it on our own. The collections work better to do as a collaborative effort. Mr. Quist

thinks the other town could participate if the Town of West Boylston ran it. Mr. Allen noted that everyone who works at the site is a volunteer and they are a non-profit organization.

Mr. Phillips doesn't think the Selectmen can take any action until they see the agreement signed by the two parties. He also wants Wachusett Earthday added back into the Memorandum of Agreement with the Town of West Boylston.

Mr. McCormick pointed out the fact that nowhere in the agreement does it say that ultimately DCR is responsible for anything that happens on the site. He would like to see verbiage in the agreement that say that DCR will assume all responsibility for any issues or problems that happen on the property as a result of this operation. He used as an example if something should happen with the water we could go back to the state and they would fit it with no question asked or any legal proceedings needed. Mr. Scannell will run that past their lawyers. Mr. McCormick also wants to ensure that there are no gray areas over who will take care of this. Mr. Scannell understands and does not disagree.

Barry Esteves, resident of Raymond Huntington Highway questioned whether Town Counsel has had an opportunity to review the latest agreement. Mindy Esteves asked how Town Counsel feels about the town entering into an agreement with DCR for this project. Mr. Gaumond explained that Town Counsel was confused about the agreement and thought that things were a little gray. Town Counsel pointed out that it is still in the hands of the Board of Selectmen. Counsel does not have any objection to the agreement itself. They do have a question about the way it is structured and they do not see that it could not be enforced.

Rep. O'Day noted one of the concerns is the issue of DCR/Wachusett Earthday and the issue of DCR not having to be in concert with all of the town bylaws. He thinks the way it is worded with the two entitles if we look at Wachusett Earth Day they would have to be subject to town bylaws and where this site is to be located is in disharmony with the town's bylaws and that is part of the concerns that the neighbors still have. He asked how do we come to an agreement on that point.

Mr. Gaumond explained that this question has been on the table for one year and Town Counsel has reinforced that question. Mr. Scannell noted that DCR's sees Wachusett Earthday working as an agent of the Commonwealth. It has been their intent that it would function that way and his understanding is the language in Section 5 of the Memorandum of Agreement, addresses the town bylaws and was recommended by West Boylston's Town Counsel "the parties understanding that the Commonwealth 'if it operates the Center directly with its staff or by its agent or contractor', is not legally subject to the local bylaws and ordinances". Mr. Scannell was of the understanding that this language addressed that issue.

Mr. Phillips feels the town could hold Wachusett Earthday responsible if they were mentioned in the agreement. He also feels it is a private project and DCR is leasing it to Wachusett Earthday who will run the facility. He asked if Wachusett Earthday ceases operation would DCR operate the facility? Mr. Scannell indicated that yes, the intent all along was a partnership between the communities and a non-profit. If the non-profit disappears and the Center served its purpose, DCR would run it. They are looking at their staff to staff the facility now. Mr. Phillips asked about the clause in the previous agreement pertaining to if Wachusett Earthday leaves anything on the property it becomes the property of the state. Mr. Scannell indicated that the language is also in the new agreement.

Rep. O'Day asked if the DCR is in partnership anywhere else in the Commonwealth with a non-profit. Mr. Scannell replied for this type of facility they are not in partnership anywhere else in the Commonwealth and DCR does not run their own facility.

Mr. Rucho questioned who will sign the contracts. Mr. Scannell advised that it could be either party. They intend to look at the most advantageous agreement financially. Should the state be able to get a better contract they would do it.

Mr. Rucho questions Item #8, truck traffic in the Memorandum of Agreement. It says "DCR agrees to work with any contractors." He would like "DCR and Wachusett Earthday". He also wants the language to say "this is the way you will go." Mr. Scannell's concern is what if DCR contracts with a firm and their price to haul is exorbitant due to the route not being as direct as it could be. He also noted that the area has been rezoned to business and light industrial and questioned if the town has the ability to control that. Mr. Rucho wants to ensure that we do not have trucks driving on our streets. It is a sticking point to him and he would not just 'encourage' them he would 'tell' them.

Mindy Esteves feels it is very disheartening and unfortunately as it seems DCR changes agreements when they feel they need to change them and they say things at meetings, agree to things and some of the things they asked for are not in the agreement. She thinks it is bizarre that words changes can be made. She added that if Town Counsel issued an opinion that this is not a state project, then they should have to follow the bylaws. She feels the Board of Selectmen should tell them they cannot do this and proceed with litigation. Mr. Phillips asked for a list of the other items the residents asked for. Ms. Esteves notes that the list included lighting, fencing, traffic, patrolling, water testing, the look of the site and contact information. Mr. Phillips asked Mr. Scannell if he is willing to add those items into the agreement. Mr. Scannell would like to see the list. Mr. Phillips feels that part of the stalling on this has been due to the Selectmen and it not DCR.

Mr. Scannell indicated that they certainly intend to install lights at the gate. The residents wanted street lights installed down the street and they do not intend to do that. They also intend to have their rangers patrol the area on a daily basis. The agreement does include language for DCR to regularly patrol the area. He does not see any issue to patrols twice daily. With regard to the look of the site, they did discuss with the neighbors that DCR would plant bushes, however they would rather wait and walk the site once it is completed prior to planting bushes. They will have vegetation along the front of the site. Both Messrs. Pruneau and Phillips think waiting makes sense so we can see the contours. Ms. Esteves wants to clarify it would be vegetation and not a chain-linked fence. According to Mr. Scannell, the water testing is in the agreement and monitoring will be done by DCR. Contact information will be updated regularly. The state labs will be in charge of sampling the monitoring wells and the residential wells will be tested by a private company.

Paula Mercurio, resident of Huntington Highway voiced concern that if Town Counsel does not believe this is a state-run project. She questioned what rights they have as town members to say we would like to fight this. She was at voting yesterday and a lot of people said DCR should be abiding by the town bylaws. The land was acquired by DCR to protect the watershed and nothing was to be put upon that property. She does not understand how this could be occurring, and questioned what do we need to do as towns people to fight this issue.

Mr. McCormick asked Mr. Scannell if we do not agree to this, is it going to be built? Mr. Scannell's response was it is our intention to build it and we are hoping to do it with you. Mr. McCormick replied if the Selectmen fail to sign the MOA it is your intention to go forward and build and operate the facility. Mr. Scannell indicated yes. Mr. McCormick explained to the group that the town could fight this and go to court, however we have tried to do this many times with DCR and spend hundreds of thousands of dollars to fight them and we never have been successful. We have to make decision to spent \$100,000, and the facility will be built and operating and running. We have to make a financial and moral decision, do we have those funds?

Both Ms. Mercurio and Mr. Esteves voiced concern that the Board does not know how much it will be to go to court and voiced concern that Town Counsel has indicated that the proposal is not in compliance with the zoning bylaws so what they are doing is not legal. Mr. McCormick replied that he is not sure if it is legal or not. Mr. Phillips appreciates what everyone says but he thinks we need Town Counsel's advice. He noted the agreement still needs to be signed between DCR and Wachusett Earthday. Mr. Allen indicated that it will be signed.

Mr. Philips thinks the other communities need to know about the second version of the agreement and we should bring everything back and vote to accept or not accept. He would like signed agreements in place prior to that vote. Rep. O'Day asked if the other towns that are involved are privy to the fact that Town of West Boylston is having their start up fees covered. Mr. Scannell indicated that all the towns have been made aware that DCR will cover these costs for West Boylston. Those towns have signed agreements that say they are agreeing to participate in the site and financially participate in the project. Three will be one representative from each town that will guide the function of the site. None of that has changed and Mr. Scannell will get both signed agreements to the Board of Selectmen for next Wednesday. Mr. Phillips would like something from Town Counsel spelt out and then come back and vote. Mr. Scannell will have a revised version in seven days and a copy of the residents letter of concern will also be provided to him.

As a courtesy to the other towns, Mr. Philips would like the other communities involved to have an opportunity to read this. Mr. Scannell has met with representatives from each of the communities involved and they have not expressed any concerns over this arrangement. Mr. Gaumond will have draft minutes send to Mr. Scannell.

Mr. Scannell expressed his concern over jeopardizing the \$75,000 of grant money which needs to be spent prior to the end of June. He hopes to move forward.

Mr. Gaumond will speak with Town Counsel, get a clear letter. Mr. Phillips would like a legal opinion for the new agreement. With regard to the Wachusett Earthday and DCR agreement the only comment he needs to include is that DCR is the ultimate responsibility for what happens on the site.

2. Review and consider voting to approve Agreement Between DCR and the Town of West Boylston for the removal of ice storm debris (tentative)

Mr. Gaumond reported that yesterday we received correspondence from DCR on the storm damage clean up. They have met with FEMA, and hope a bid package will be released soon. He expects a 48-hour turn around and at that point they give the town our estimate on the 25% of the costs. Once that figure is provided to the town we will consider whether we want to sign the MOU. They will also contact the Chief Financial Officer of the town to confirm that the 25% is available. Mr. Gaumond is still waiting to see if there is going to be any additional state money allocated to the town. His expectation is that by the next meeting this will be ready to go.

Mr. Phillips questioned how enforceable the MOU is with DCR. Mr. Gaumond feels it is enforceable on this issue. Our options are we go out and take care of the debris on our own, enter into the agreement with DCR, or do nothing at all. Mr. Phillips asked what if they do a horrible job or violate the beetle Restricted Area. If we could not enforce any of the other MOU's with DCR what makes this one different? Mr. Gaumond will have the agreement reviewed by Town Counsel.

3. Budget Discussion

This item will be tabled for this evening.

With no further business to come before the Board, motion Mr. Phillips at 9:15 p.m. to adjourn, seconded by Mr. Pruneau, all in favor.

Respectfully submitted,

Approved: April 15, 2009

Nancy E. Lucier

Kevin M. McCormick, Chairman

Valmore H. Pruneau, Vice Chairman

Allen R. Phillips, Clerk

Christopher A. Rucho, Selectman

Steven Quist, Selectman